

REMARKS

Claims 59-63 and 66-69 are pending in the present application. The Listing of Claims has been included in the present response. Although no claim amendments have been made, the status identifier of claim 62 has been corrected.

The Claim Rejections under 35 U.S.C. § 112 Should be Withdrawn

Claim 62 has been rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. In particular, the Examiner contends that an affidavit or declaration by applicants or someone associated with the patent owner must be filed, wherein the affidavit or declaration states that the deposit has been made under the terms of the Budapest Treaty and that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent.

Applicants submit herewith a declaration by the depositor of the Deposit I-2614, Prof. Dr. Osterhaus. In his Declaration, Prof. Dr. Osterhaus states that the deposit has been made with the CNCM, which is an International Depositary Authority as established by the Budapest Treaty, and that no restrictions on the availability to the public of the deposited material were imposed by the depositor. Thus, Applicants have complied with the requirements of 37 C.F.R. § 1.808.

Claim 62 has further been rejected under 35 U.S.C. § 112, first paragraph, for indefiniteness. In particular, the Examiner stated that the status identifier of claim 62 is "amended" even though the claim has not been amended. The status identifier of claim 62 has been corrected accordingly.

Applicants request that the rejections of claim 62 under 35 U.S.C. § 112, first paragraph, be withdrawn.

The Double Patenting Rejection

Claims 59-62 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting over co-pending U.S. Patent Application No.: 10/466,811 ("811 Application").

Applicants submit herewith a terminal disclaimer. Applicants respectfully request that the double patenting rejection be withdrawn in view of the terminal disclaimer.

CONCLUSION

Applicants respectfully request that the above remarks and amendments be entered and made of record in the present application file.

Respectfully submitted,

by: *Jacqueline Benn*
Reg No. 43,492

Date: July 27, 2009

Laura A. Coruzzi 30,742

Laura A. Coruzzi (Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939